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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,008	08/21/2006	Josef Felber		9071
60333	7590	10/25/2010	EXAMINER	
EDWIN D. SCHINDLER 4 HIGH OAKS COURT P.O. BOX 4259 HUNTINGTON, NY 11743-0777			VOLZ, ELIZABETH J	
ART UNIT	PAPER NUMBER		3781	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/598,008	<b>Applicant(s)</b> FELBER, JOSEF
	<b>Examiner</b> ELIZABETH VOLZ	<b>Art Unit</b> 3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 August 2010.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 11-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 11,12,14,17 and 21 is/are rejected.  
 7) Claim(s) 13,19 and 20 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 15 August 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

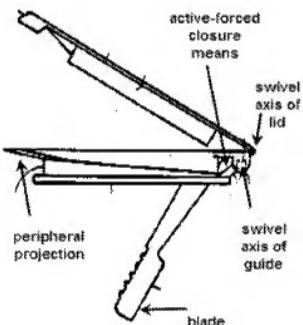
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11, 12, 14, 17 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Robichaud et al. (U.S. Patent No. 4,934,590).
3. Regarding Claim 11, Robichaud et al. discloses a flap shutter for combo and carton packaging for automatic opening of a packing by opening a closure lid, comprising: a frame base element 102 (Figure 14) having a flat bottom side for connecting with a combo or carton packing (Figure 12), said frame base element further including a peripheral projection (Figure 15 below) projecting upwardly for forming an outflow support opening within said frame base element; a lid 14 (Figure 15) connected to, and swiveling on, said frame base element for closing the out-flow support opening formed by said frame base element (Figure 14) and for opening and closing said frame base element; a guide element 106 (Figure 15) capable of swiveling on said frame base element extends over an inner side of said peripheral projection with a swivel axis of said guide element (Figure 15 below) running parallel to, and in front of, a swivel axis of said lid (Figure 15 below); active forced-closure means (Figure 15 below) located between said guide element and said lid for allowing said guide element to be swiveled downwardly by opening said lid for cutting, tearing or pushing downwardly a packing

lying below said guide element in a swiveling direction opposite a swiveling direction of said lid (Column 6, Lines 49-52), so that when seen in a side view, said lid swivels in a first direction and said guide element swivels in a second direction (Figure 15), said second direction being a direction opposite said first direction (Figure 15).

**Figure 15 (Robichaud et al.)**



4. Regarding Claim 12, Robichaud et al. discloses a lid 14 (Figure 1) which is placed and held on said frame base element in a swiveled-up position via a first swivel shaft 128 (Figure 15) and said guide element is placed and held in a swiveled-down position on said frame base element via a second swivel shaft 128 (Figure 15) running parallel to a direction of a swivel region of said lid.

5. Regarding Claim 14, Robichaud et al. discloses a lid 14 (Figure 15) has a top side that tangentially merges in said first swivel shaft (Figure 15) and said guide element has a top side (Figure 15) that tangentially merges in said second swivel shaft,

so that a bottom side of said lid lies substantially on a top side of said guide element in a swiveled-down mode on said base element (Figure 14), and a marginal region of said guide element forms a blade (Figure 15 above) projecting downwardly, so that a downwardly projecting piercing tip is formed at a tip of said guide element (Figure 15).

6. Regarding Claim 17, Robichaud et al. discloses a lid 14 (Figure 15) which is placed and held in a swiveling position on said frame base element via a first swivel shaft (Figure 15) and said guide element is placed and held in a swiveled-down position on said frame base element via a second swivel shaft running parallel to a direction of a swivel region of said lid (Figure 15), said first swivel shaft and said second swivel shaft being formed with tilt plate bolts at their ends 124/126 (Figure 15).

7. Regarding Claim 21, Robichaud et al. discloses a frame base element 102 (Figure 15) including inward projections 138 (Figure 10) formed on a side of said frame base element extending over said guide element for forming a stopper, so that said guide element is swivelable only downwardly from said frame base element (Column 6, Lines 59-61).

***Allowable Subject Matter***

8. Claims 13, 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments filed 8/5/2010 have been fully considered but they are not persuasive.

10. Applicant argues that elements in Robichaud et al. swivel in the same direction instead of the opposite direction as disclosed by Applicant. However, Applicant refers to Figures 6-9 whereas Examiner refers to the embodiment in Figures 10-15. As seen in figure 15, the cover and tongue swivel in opposite directions.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH VOLZ whose telephone number is (571) 270-5430. The examiner can normally be reached on Monday-Thursday, 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. V./  
Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781